PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number 20412-06420	

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____	Application Number 10/046,447	Filed October 29, 2001
	First Named Inventor Derek E. Poppink	
	Art Unit 2163	Examiner Alford W. Kindred

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
      Note: No more than five (5) pages may be provided.

I am the

☐   applicant/inventor.

☐   assignee of record of the entire interest.
    See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.

☒   attorney or agent of record.
    Registration number 50,784 _____ .

☐   attorney or agent acting under 37 CFR 1.34.

    Registration number if acting under 37 CFR 1.34 _____

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        April 11, 2007
             Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒   *Total of one form is submitted.

**<u>REMARKS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW IN U.S. PATENT
APPLICATION NO. 10/046,447 FILED ON 10/29/2001</u>**

Pre-appeal brief review is appropriate in this application, because the rejections in the

December 11, 2006 Final Office Action contain clear deficiencies. Chidlovskii and Grefenstette,

separately, or in combination, fail to disclose unconscious data retrieval which is performed

asynchronously with respect to, or without, user interaction, as recited in independent claims 1,

13, 30, 55, 61, 62, 69, 78, 99, 102, 103, 108, 112, 124, 125, and 131, and thus *prima facie*

obviousness required by MPEP §2143.03 has not been established.

<u>Rejection of Claims 1-10, 12-66, and 68-131 under 35 U.S.C. §103</u>

Claims 1-10, 12-66, and 68-131 were rejected under 35 USC § 103(a) as allegedly being

unpatentable over U.S. Patent Publication No. 2003/0069877 A1 ("Grefenstette") in view of U.S.

Patent No. 6,327,590 B1 ("Chidlovskii"). This rejection is respectfully traversed.

Independent claims 13, 30, 55, 61, 69, 78, 102, 103, 108, 112, 124, 125, and 131

respectively recite methods, systems, and computer program products for unconscious data

retrieval, comprising, *inter alia*:

> "extracting…querying…receiving…evaluating…
> wherein extracting, querying, receiving, and evaluating are performed ***without user
> interaction.***"

Independent claims 1, 62, and 99 similarly recite a method, system, and computer

program product for unconscious data retreival, comprising, *inter alia*:

<div align="center">1</div>

"extracting…querying…receiving…evaluating…

wherein extracting, querying, receiving, and evaluating are performed *asynchronously with respect to user interaction with the primary document*"

Thus, the claimed invention provides for the steps of extracting, querying, receiving, and evaluating *independent from* a request by the user.[1]

The Examiner admits that Grefenstette "does not explicitly teach 'responsive to a connection with at least one data source being available pre-fetching at least one query … [wherein extracting, querying, receiving, and evaluating are performed] asynchronously with respect to user interaction with the primary document….'" The Examiner thus asserts that Chidlovskii discloses these aspects of the claimed invention. *See* Final Office Action, 12/11/2006, pp. 2-3. However, Chidlovskii does not disclose these aspects of the claimed invention and thus does not remedy this shortcoming of Grefenstette.

Contrary to the Examiner's assertions, the operations related to performing a query as disclosed in Chidlovskii, including pre- and post-processing, are *in direct response to the user's action* of formulating a query. *See, e.g.*, Chidlovskii, col. 2, ll. 49-50; col. 8, ll. 35-41 ("Once a user has formulated a query, the search pre-processor takes the query…"). Therefore, Chidlovskii does not disclose "extracting, querying, receiving, and evaluating…*without user interaction*" nor "*asynchronously with respect to user interaction*."

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[1] Paragraph [0023] of the Specification for the claimed invention defines asynchronous retrieval as follows, "a technique whereby an information item is provided independently of a specific request by the user."

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The Examiner maintains that Chidlovskii's ranking combined with re-ranking teaches asynchronous operation. *See* Final Office Action 12/11/2006, at 8. Re-ranking as disclosed by Chidlovskii occurs when the ranking of search results (resulting from the user's query) does not fall within the user's desired context, thus the results are re-ranked, e.g., by the user. *See, e.g.,* col. 8, ll. 43-46. Again, the steps of ranking and re-ranking are the result of the user's original (and in some cases updated) search query request, and thus are not performed "*without user interaction*" nor "*asynchronously with respect to user interaction*" as claimed. Even assuming, *arguendo*, that these steps could be considered to be asynchronous as the Examiner claims, this at most would correspond to "evaluating" the result asynchronously. This hypothetical showing still is insufficient to disclose or suggest the steps of "extracting, querying, [and] receiving" being performed "*without user interaction*" or "*asynchronously with respect to user interaction.*" As discussed above, Chidlovskii shows exactly the opposite: that the query and its received result are *in direct response to the user interaction*.

Further, Chidlovskii is not relied upon for the "extracting" step, and in fact performs no query extraction at all, much less asynchronous extraction; thus Chidlovskii cannot be replied upon to show "*extracting... performed without user interaction*" or "*asynchronously with respect to user interaction*. Finally, as noted above, Chidlovskii's pre- and post-processing also take place in direct response to a user-formulated query. Chidlovskii, col. 8, ll. 35-41.

Thus, independent claims 1, 13, 30, 55, 61, 62, 69, 78, 99, 102, 103, 108, 112, 124, 125, and 131 are patentably distinct over the cited references.

Independent claims 1, 62, and 99 further recite:

"wherein displaying the at least one received query result is performed *without regard to whether a connection with a data source is available*."

The statements by the Examiner in the Final Office Action appear to indicate that the Examiner is confused as to which steps of the claimed invention are performed when a data source is available, and which are not. For example, the Examiner states that certain aspects of Chidlovskii "read on applicant claim language with respect to off-line retrieval of pre-fetch results." Final Office Action, 12/11/2006, at 9 (emphasis added). The claimed invention does not recite "off-line retrieval of pre-fetch results"; on the contrary, the claims recite that the pre-fetching is "responsive to a connection with at least one data source *being available*" (emphasis added). Thus the Examiner's own statements indicate that Chidlovskii shows just the opposite. The aspect of the claimed invention that is preformed "without regard to whether a connection with a data source is available" is "*displaying* the at least one received query result" (emphasis added). There is no mention anywhere in Chidlovskii of displaying query results without regard to whether a connection with a data source is available, as claimed.

Thus, independent claims 1, 62, and 99 are patentably distinct over the cited references for this additional reason.

Claims 2-10, 12, 18-29, 32-54, and 56-60 variously depend from claims 1, 13, 30, 62, 69, 78, 99, which were shown above to be patentably distinguishable over the cited references. Accordingly, for at least the reasons set forth above, these dependent claims are submitted to be patentably distinct from the cited references.

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To establish *prima facie* obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. See MPEP §2143.03. Because Grefenstette and Chidlovskii, alone, or in combination do not disclose generating a query asynchronously with respect to user interaction with the primary document, or without user interaction, the deficient disclosures of these references preclude the Examiner from establishing even a prima facie basis from which a proper determination of obviousness can be made. Therefore, it is respectfully requested that the final rejections of claims 1-10, 12-66, and 68-131 be withdrawn.

Respectfully submitted,
Derek E. Poppink et al.

Dated: <u>April 11, 2007</u>

By: <u>/s/ Jennifer R. Bush/</u>

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